

Her MAJESTY's
Prerogative in IRELAND;

THE
Authority of the Government
and Privy-Council There;

AND
The Rights, Laws, and Liberties
of the City of DUBLIN,
ASSERTED and MAINTAIN'D.

In ANSWER

To a PAPER Falsly Intituled,
*The CASE of the City of DUBLIN, in
relation to the Election of a LORD-MAYOR
and Sheriffs of the said City :*

A True State of this Matter being absolutely
necessary, for the Information of all Her
MAJESTY's Subjects in GREAT BRI-
TAIN, as well as in IRELAND.

*Iustum, & tenacem Propositi Virum
Non Civium ardor prava iubentium
Mente quatit solidâ.* HOR.

London, Printed for H. CLEMENTS, at the
Half-Moon in St. Paul's Church-yard. 1712.

OF THE

PICCOLO AND LEMMA

THE
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and Privy-Council There;

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of the City of Dublin

ASSERTED and MAINTAINED

IN ANSWER

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James M. 1769

AN
ANSWER

TO THE
CASE of the City of
DUBLIN, &c.

THE Substance of this modest Paper, which I am going to examine, was first presented to the QUEEN in Writing, by the Name of a *Petition*; and is now tender'd to all Her Subjects in Print, under the more Popular Title of a *Case*. To offer Her Majesty such a Heap of Falshoods and Mis-representations, as I shall abundantly prove this to be; was an Instance of Duty and Good Manners, peculiar to some Gentlemen of a certain Character. I say to do it *at all*, was very extraordinary: But it was much more so, to *publish* it to the World, while it was under Her Majesty's private Consideration, in order to make the People Judges of the Judgment She should give. The Government and Privy Council of *Ireland* have surely no reason to complain that Their Authority has been struck at;
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since She from whom That Authority is deriv'd, has been treated with so little Ceremony. Whether the Compliment were greater to the Persons *from* whom, or the Person *to* whom the Appeal was made, is a Point which the sagacious and well-bred Recorder Himself may perhaps be puzzled to determine. The Appeal indeed was very regular in One Respect, as it went *upwards* from the Government and Council of Ireland to the Queen: But did it still go on *Ascendendo* from the Queen to the People? Undoubtedly it did; if They are our *Sovereign Lords*, according to the Phrase of some modern Politicians. And supposing They were so, which I believe will not be *Now* asserted in express Terms; yet to remove a Cause from one Court to another, before it has had any Decision in the former, is, with humble Submission, a very unusual Method of Proceeding.

The next thing I have to object against, is the *Title* of this Paper. It is call'd, *The Case of the City of Dublin*. Whereas in reality it is only an unfair, prevaricating Representation of some particular Persons, who are infringing those Rights they pretend to vindicate. I know not how it happens that some certain Persons have long been in Possession of that good Word *Liberty*; and they then make the greatest Use of the *Sound*, when they are endeavouring to destroy the *Substance*. What is Liberty, in the Sense we are now speaking of, but the free undisturb'd Enjoyment of one's Rights? And what gives a Right, but Law? Are those then the true Assertors of Liberty; who first violate a Law, and then
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by an incompetent Authority pretend to Repeal it? Who set up their own Arbitrary Will and Pleasure in Opposition to Law, debar an unexceptionable Person from his Right, and shew their Favour to a Faction at the Expence of Common Justice? A Man may say and swear he is asserting my Liberty, while I see and feel the Fetters he has put upon me: But am I bound to believe him? Yes; upon Condition he be insolent to his Betters, as well as to his Equals. For, it seems, 'tis perfect Freedom to be Enslav'd, provided our Lawful Governors be at the same time Insulted; the Merit of the latter atones for the Inconvenience of the former; and in order to deprive a Prince of his Rights, what Free-born Subject would not be content to lose his own?

But to come closer to the Merits of the Cause! This Author, by way of Introduction, mentions the Charters granted to the City of *Dublin*. What he takes notice of, does not very nearly affect the present Case; but I can tell him one thing that does. In the very first of those Charters, I am told, it is provided, That the Government shall have a Power to approve or disapprove Persons elected into the Offices now in Controversy. So that the *New Rules* made in 1672 are, in that Particular, only declarative of the Charter it self. Our Author perhaps did not know this; or if he did, I must confess it was not his Business to discover it.

Upon the Settlement of Ireland, after the Rebellion in 1641, it was thought necessary, he says, for the preventing the Election of Magistrates by the Influence or Interest of Papists,

to give a Power to the Government and Council to approve, or disapprove, &c. Now, to prevent the Influence of Papists, was far from being the *Only* Design of those Acts; tho' he puts it *wholly* and *solely* upon that Foot. But some People can't live without the Cry of Popery; whether it be to the Purpose, or no. The *Irish* Rebellion is indeed mention'd in the *Preamble to the Act of Settlement*; and so are many other things, as well as that: Particularly, there is a Loyal Concern express'd for the *Regal Dignity*, and *perfect Obedience to the Crown*. But those are Circumstances, which I own, this Gentleman had no reason to take notice of; any more than of that Clause of the Charter above-mentioned. However, 'tis acknowledg'd, that to lessen the Interest of Papists, was *one* very great and good Design of those Statutes. If then the Observation of the New Rules made in pursuance of those Acts of Parliament tends to keep out Popery; it necessarily follows, that the Annulling of them is one way to bring it in. Now they have been notoriously attack'd by the late Proceedings which this Paper endeavours to defend; and from that Quarter there may indeed be too much Danger of Popery.

But were Papists the only Persons concern'd in the Rebellion of 41? No; Factionous Protestants had their Share in it: and a considerable Share it was. They were afterwards rewarded by the Usurper, for their eminent Services: For which reason, some of their Posterity at this Day drink to the *pious Memory* of Oliver Cromwell; and have the
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Impudence to join it with the *glorious Memory* of King William. The Principles of the Ancestors are rooted in the Progeny; and the Occasion of this very Controversy, which we are now upon, is one blessed Effect of so hopeful a Plantation. Nor is it at all strange that Papists and *such* Protestants should unite in the same Cause. Their Doctrines of Government are exactly the same; their Actions in relation to it, ever were, are, and will be so. And those who, upon all Occasions, make such a Bawling about Popery, do as effectually promote its Interests, as the Papists themselves.

And here I think it is very material to observe, that by the New Rules, all Persons admitted into the Offices there mention'd, are required to take the following Oath. **I A. B. do Declare and Believe that it is not Lawful, upon any Pretence whatsoever, to take up Arms against the King, &c.** That great Endeavours have been us'd to get that Clause Repeal'd, is sufficiently known. But as it is not yet done; *Query*, Whether that Oath has been constantly administer'd as the New Rules direct? If not; *Query* again, What Penalties are incurr'd by those who neglect to administer it; and by those who presume to execute the Offices aforesaid, without taking it?

But suppose Popery had been the *Only Occasion* of those Acts of Parliament; it is not the only *Matter* of them. Every Body knows that Laws are commonly made upon some particular Occasion or other; yet the Substance of them is general, and of a much wi-

der Extent than that Reason, or Fact which first gave Birth to them. Guiseard, if I mistake not, was a French Papist: But for all that, should a British, or Irish Protestant of His Principles (as God knows there are too many) think fit to Stab a Privy-Counsellor, and then plead his not being of the same Country and Religion with the Criminal aforesaid; I doubt His Plea would be a very bad one, and scarce sufficient to save Him from the Gallows. This Act of Parliament, which we are now considering, Recites; That for the Prevention of ALL future Rebellions, ALL Insurrections, and Attempts for the time to come, it is Enacted, &c. The Words are as general as Words can be: And I dare say, no King or Queen whatsoever would be at all better pleas'd with a Protestant Rebellion, than with a Popish One. Can any thing therefore be more necessary than This Law which was made to prevent all such Confusions? And yet, as useful as it is, some certain Citizens (as We shall see in its proper place) have acted in direct Opposition to it; and 'twas kindly done of 'em that They did not Repeal it.

Since our Author has been pleas'd to quote some Part of the New Rules (which does Him no manner of Service,) and concludes with an &c. I will make use of the same Privilege, and go on just where He leaves off. The Corporation shall from time to time proceed to a New Election of fit Persons for the said respective Offices, for which the Persons so presented shall not be so approv'd of; and shall in like manner present their Names to
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the said Lord Lieutenant, or other Chief Governour, or Governours, and Privy-Council of this Kingdom; until they shall have chosen such Persons for the said respective Offices, as shall be approv'd of, as aforesaid. Now I only desire to ask, whether Re-electing the same Person who has been so disapprov'd of, be not an expresse Breach of This Law, and directly flying in the Face of the Government? After a Disapprobation, They shall go on to Elect, and Present; until they shall have chosen such fit Persons as shall be approv'd of. And is Alderman Barlow a fit Person to be chosen in the room of the same Alderman Barlow who was before disapprov'd of, as unfit? At this rate, the Authority of the Government and Council in approving, or disapproving, is a perfect Jest; and the Law is absurd in its own Nature. It was therefore prudently contriv'd by the Stater of this Case, to leave out that Clause of the New Rules; tho' it be absolutely necessary in order to give a True State of it. An unlucky Clause in the Act of Parliament, previous to them, is for the same reason, wisely omitted: In which it is Enacted; That it shall be Lawful for the Government and Council to inflict such Penalties for the Breach of the Rules, Orders, and Directions touching such Corporations, as They in their Wisdoms shall think fit: So as the Penalties do not extend farther than to the Removal and Disfranchisement of such Persons as shall be found guilty of the Breach thereof.

How fair That Election was, at Easter-Assembly, 1709. and how good the Reasons for not Electing Alderman Constantine, will ap-

pear, before we have done. That Alderman *Constantine* made it his Request to go above the Cushion, and wear Scarlet, is a notorious Falshood in Fact. Sir *William Fowndes*, who was Lord-Mayor, and actually in the Chair at that time, declar'd upon Oath at the Council-Board, that He neither saw, nor heard any such Thing. And the Witness, call'd on the other side, fail'd in his Evidence. It is true, the Alderman thank'd them for their Nothing; but 'twas in an *Ironical* manner; not to expresse Gratitude, but Indignation. And that this was his Meaning, is evident; because He has explain'd it by his Declarations, and his Actions. After those Words; *Gentlemen, I thank You*; He added, *But I hope You'll not take it ill, if I make my Application elsewhere*. As He never ask'd that No-Favour, so He never accepted of it. He never wore Scarlet, nor sat above the Cushion in Form, and as in his own proper Place. He insisted on His Right to be chosen Lord-Mayor; left the Court with Resentment, refus'd to sign the Certificate of the Election of his Competitor, and immediately petition'd the Government, and Council against it. Nor does the Order, transcrib'd out of the *Monday-Book* by this Writer, mention any Request made by Alderman *Constantine* to pass above the Cushion, and wear Scarlet; and yet That (had there been any such Thing) would have been the only Use He could possibly have made of That Order. So that in short. Alderman *Constantine's* good Brethren debar'd Him from a Thing of Consequence which was His Right, and which He demand-
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ed; and gave him a Bauble which he neither desir'd, nor accepted of. What ridiculous Childrens Play is this? Besides, it is well known that it has not been the Custom for any Alderman to be admitted to pass above the Cushion, and wear Scarlet, as if He had been Lord-Mayor, unless He had been *elect-ed Lord-Mayor*, and upon his own Request *excus'd from Serving*; and then, *upon his own Request too*, admitted to pass above the Cushion, and to wear Scarlet. And was That Alderman *Constantine's* Case? No; but They refus'd to elect Him Lord-Mayor when it was *His Right*; and Then would have Thrust Him above the Cushion, that He might *never have any*. For so it was argu'd at the Council-Board; *viz.* That he could not Now be chosen, because he was above the Cushion. Tho', according to the late Practice, even That *Consequence* is false, as well as the *Fact*: And These very Persons have several times contradicted it by their own Actions, even since This Cause has been depending: As will appear from what We shall hereafter have Occasion to take Notice of.

But the *Case* tells us, Alderman *Constantine* soon afterwards petition'd the Council-Board; and that His Petition was rejected; and the Election of Alderman *Forrest*, His Junior, was approv'd. This was in the Year 1709. *Query*; Whether That Petition were so much as receiv'd? If so, Whether it were suffer'd to be Read? If it were Read, what became of that Petition? Some People have a compendious Way of determining Causes; which
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is to *determine* without *bearing*. The present Government and Council not being Persons of so much Dispatch in Business, gave Themselves the Trouble of hearing the Case argu'd for Three Days together. But Alderman *Constantine*, We are told, did not so much as alledge any Irregularity in the Election, other than the not chusing Him, as being Senior Alderman. That is to say, He did not alledge any Irregularity, but only the greatest Irregularity that could be alledg'd. He had both by Law and Custom a Right to be elected, as Senior; unless any Disqualification could be shewn; which was not pretended. So that the Grievance He complain'd of, was a Trifle; only an Exclusion from His Right contrary to Law and Justice; That's all: He did not so much as alledge any other Irregularity.

The Summer following, as the Case informs us, Alderman Page, who formerly serv'd in the Mayoralty, was elected. If He was formerly Lord-Mayor, was he not above the Cushion? Certainly, This Alderman *Constantine* is the most unfortunate Man breathing. He can't be chosen, upon a Pretence that He is above the Cushion, when he really is *not*: Another can be chosen by the very same Persons, when every Body acknowledges He *is* above the Cushion. But Here lies the great difference; One is Alderman *Constantine*, and t'other is Alderman Page.

As to Alderman *Constantine's* not desiring to be put in Election, nor giving the least Intimation to the Board, that He insisted on being elected,

*elect*ed, Then, and at the following Assembly, 1710; the Reason of it was a plain one; because he knew 'twould be to no purpose. He knew the same Persons who would not elect Him *before*, were not like to elect Him *Then*; and as for Petitioning (which was His only Resource) Those who had refus'd to Read His first Petition, would not surely have been very forward to grant the Prayer of his Second. His *Taking his Place above the Cushion* is again mentioned; and that He did any such Thing, is again deny'd. He never *took his Place* above the Cushion, as a Right, or in Form; and never at all wore a Scarlet-Gown. Very likely He may have *sate* above the Cushion, (as many others have done as well as He) when every Body *sate* promiscuously, and no Order was observ'd; but not otherwise. Their own Witnesses declar'd, and They themselves have acknowledg'd, that it is common for any Alderman to sit above his Senior, where He happens to find a Seat, without such Niceness of Ceremony: And that Alderman *Constantine*, since His pretended Admission to go above the Cushion, has oftner *sate* below it, than above it. Tho' were all which They alledge upon This Article never so true, it is nothing to the Purpose, as I before observ'd: Since Others have very lately been elected Lord-Mayors, who were on all hands acknowledg'd to be above the Cushion.

It was thought, says our Author, *after two Elections of Lord-Mayors, and a Rejection by the Government and Council of Alderman Constantine's*

stantine's Petition, that his Pretensions to the Mayoralty were at an end: Nevertheless, at the last Easter-Assembly He thought fit to revive them, &c. So it was thought several other very good Things were at an end: But (God be prais'd) Those who thought so, happen'd to be mistaken. And I never yet heard, that a New Government or Ministry always look'd upon Themselves to be bound in Conscience or Honour to tread exactly in the Steps of their immediate Predecessors.

He proceeds in the next Place, to lay down and enforce the Arguments, as insisted upon by the Council against Alderman *Constantine*. In answer to which, I take upon me to affirm, in the first Place, That there is no such Expression in the New Rules, as, *Whom They think most fit*: Nor is there any Power given to the Board of Aldermen to elect in so unlimited a manner. The Board of Aldermen, by the New Rules, are to Elect; Who doubts it? But sure, by the same Rules, They are not to elect contrary to Law and Custom. Whether They do, or not, the Government and Privy-Council are to be Judges: And They have as uncontestable a Right to disapprove, as the others have to elect. But, He says, *there neither was, nor could be an immemorial, or uninterrupted Usage, &c.* And yet it appears from their own Books, that there both could be, and was such an Usage; and if that wo'n't do, there is an express Law to the same purpose. Tho' This be Matter of *Fact*, not of *Reasoning*; yet our Writer, to shew his Talent at Disputing, is resolv'd to

Argue

Argue the Point; and his Argument is an admirable One. There could be no such Usage, &c. for *that the New Rules first gave the Lord-Mayor and Aldermen the Right of Electing; and that in general Terms without any Restriction, or relation to any former manner of Electing.* That is; both Law and Custom requir'd that the Senior Alderman should be chosen: Another Law is made about *another Thing*; therefore the former Law and Custom are abrogated. For this New Rule entirely relates to the Persons *Electing*; not to the Right of the Persons to be *Elected*: Which continues just as it was before. It appoints the Persons who are to act according to the Law and Custom above-mentioned; but it does not destroy That Law and Custom. But He says, it gives the Board of Aldermen a Right to Elect, *without any Restriction, or relation to any former manner of Electing.* If He pleases, This New Rule *mentions nothing* about any Restriction, or former manner of Electing; nothing that affects it, or relates to it. From whence I beg leave to infer, that the former Law and Usage concerning that Restriction, and manner of Election, are still in their full force. But the Arguing on the other side is very particular: Because the Electors are alter'd, therefore every thing which related to the Right of the Persons to be elected is *ipso facto*, null and void; tho' it be not recited, and tho' nothing be enacted inconsistent with it. Thus, to give a Parallel Instance agreeable to the Schemes and Principles of these Gentlemen: We are commanded to pay an humble Obedience to Government; our Govern-
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vernors are chang'd, therefore we are to pay no Obedience at all.

It is further very observable, that the New Rules, in case of the Disapproval of any Person presented to the Government, direct that the Corporation shall from time to time proceed to a new Election of *Fit Persons*, without determining *what Persons are Fit*. And this plainly implies a Respect to other Laws and Usages of the City, touching Elections. For otherwise, if the New Rules (as our Adversaries suppose) give the Board of Aldermen an unlimited Right of Electing; They may, without any Breach of Those Rules, Elect into the Mayoralty any Person who is not an *Alderman*, nor so much as a *Freeman*: There being no mention in the New Rules, what Sort of Persons ought to be Chosen. So that the New Rules do no more abrogate the Law and Custom concerning Seniority, than they abrogate any other Law, or Custom, or even the *City-Charter* Themselves.

Our Author proceeds thus: *So that no Usage since, if any such had been, could create a Prescriptable Right, &c. No Usage since:* That is, since the Year 1672. Here is a wise Discovery, that the Space of 39 Years can't be said to be Time out of Mind. This 'tis to be profoundly Learned in the Law. Who argues *only* from the Usage since 1672? This *So that* is strangely impertinent; nay, direct Nonsense, as 'tis plac'd, and as join'd with the Words immediately preceding. We insist not only upon the Practice since 1672; but upon constant Usage for about 140 Years,

in conjunction with a positive Law of undoubted Authority.

But the Lord-Mayor and Aldermen, he says, being only a Part of the aggregate Body, &c. it was conceiv'd they were not under the Obligation of any former By-Laws made by the Corporate Body, &c. No? That's very strange: I thought the Whole had included all its Parts. The Aldermen are particular Members of the whole Corporation: And if a Law made by the whole Body does not oblige all the particular Members, (none being specially excepted) pray, whom does it oblige? But any Argument will serve the Turn with some People, to free them from the *Slavery of Laws*, and give them a Power of doing what is right in their own Eyes.

Our Author having thus endeavoured to prove (how successfully, let every body judge) that all former Laws and Customs about Elections, if any such there had been, were abrogated by the New Rules; now proceeds (in due *Method*, no doubt) to shew that there never were any such Laws or Customs, as we pretend; or at least, that they are now either *dead*, or *asleep*. And indeed, the great Point debated by the Lawyers, was, Whether by the Usages and By-Laws of the City, the next Alderman in Seniority below the Cushion had a Right to be Elected? The Council against Alderman *Constantine* deny'd, that there was any such By-Law, and insisted, That the *Usage* had gone against him. The Council for him alledg'd, That according to the By-Laws and Usage, their Client had a Right to be presented to the

the Board, to serve as Lord-Mayor. And now let us see how each Party maintain'd their Assertion.

There was a By-Law made in the Eleventh Year of Queen *Elizabeth*; whereby it was Enacted,

That to eschew the Contention which Yearly arose upon the Election of Mayor, every Alderman should keep his Turn for bearing the Charge of the Mayoralty according to his Antientie.

This was prov'd out of the City-Books produc'd by the Town-Clerk wherein a Memorial is kept of what pass'd in that, and other Years, immediately preceding, and succeeding the said Eleventh Year of Queen *Elizabeth*. This must be allow'd clearly to make good the Allegation, That by the By-Laws of the City, the Mayoralty is to go according to Succession.

No; says the *Case*: 'Tis a *sleeping, diffus'd By-Law*. When this was first said at the Council-Board, it might be excus'd; because it might be attributed to the *Ignorance* of those who urg'd it. But to *repeat* it now, after the following Proofs had been made, can be nothing less than a direct Falsity.

It appear'd by those Books, that the Order of Succession was constantly observ'd till the Rebellion of 41: And if at any time he whose Turn in Seniority it was, did not Serve; it is expressly taken notice of, that he was excus'd at his own Request, and the Rule of Succession declar'd to be inviolable. Thus,

Sept.

Sept. 22. 1612. *Thomas Carroll* requested, that *Sir James Carroll* might Serve for Him ; yet so, that He might preserve his Place in Station, as *Plunket* and *Kenedy* had done before. Lib. A. Fol. 11.

Sept. 29. 1613. *Malone* requested, that *Richard Forster* might Serve for Him ; but so, that he might preserve his Place according to Seniority, as *Plunket*, *Kenedy*, and *Carroll* had done. Fol. 14.

July 22. 1614. Alderman *Brown* Serv'd instead of Alderman *Godrick* ; but with a *Proviso*, that he should have his own Turn. Fol. 18.

Sept. 30. 1615. It was agreed, That the Election of Mayors be continued according to Succession. So that the By-law was here renew'd and confirm'd. Fol. 26.

Sept. 30. 1616. Alderman *Bennet* was Elected ; and, on his Refusal, Alderman *Thomas Allen* was Elected ; and it was thus express'd, *Whose Turn is next in Succession*. Fol. 31.

Sept. 29. 1626. Alderman *Usher* requested, that Alderman *Evans* might Serve in his Turn, with a *Proviso* for preserving his Seniority, as in Case of *Plunket*, *Malone*, *Turner*, and others. Fol. 54. Fol. 57.

Fol. 61. Sept. 29. 1632. *Edward Arthur* petition'd, that Alderman *Bennet* might Serve his Turn, being provided to undergo it.

Fol. 84. Sept. 29. 1635. Alderman *Robert Arthur* requested, that Sir *Christopher Forrester* might be continu'd for the said *Arthur*; with a *Proviso* for Place and Station.

Sept. 1642. *Smith* was continu'd for *Walter Kenedy's* Turn, at Request, and by *Proviso*.

Fol. 92. Sept. 1643. Alderman *Carbery* requested, in like manner, for Alderman *Smith* to Serve his Turn, with *Proviso*, that the said *Smith* might Serve his own Turn, when come to it.

Fol. 95. Alderman *Clarke* requested, that *William Smith*, then Mayor, might continue to Serve the next Year for which *Clarke* was Elected; but with a *Proviso* to the Law of Succession.

Fol. 99. A By-Law was made, August 21. 1651. That Alderman *Tigh* should Serve instead of Alderman *Daniel Wybrants* Elected, it being his Request; nevertheless, that the Law of Succession should remain firm and inviolated.

All these Instances were read out of the Original Books, before the Government and Council ; yet the *Case-Writer* still says, these are *sleeping, disus'd By-Laws*. What Name does such an Author deserve ?

But tho' he says, these By-Laws were *disus'd for an Age* ; yet, 'tis plain, he did not think so : Because he has not assign'd one Instance of an Interruption, till the Year 1672. And he is moreover so unlucky, that those Instances which he does produce, will be found not to answer his Purpose.

In the Year 1672 the New Rules were made. Alderman *Dee* then Serv'd as Lord-Mayor ; and from that Time, the Author of the *Case* will have it, that the By-Law is Repeal'd by the New Rules ; and that in the Instances assign'd by him, the Senior has been postpon'd, and the Junior elected. By his own Confession, the Senior Alderman had constantly been Lord-Mayor from 1672, except in those Instances which he assigns as Interruptions ; which are but Four in Number ; and even those, when examin'd, will be found to prove nothing in favour of the Cause he is defending. But it is observable, that if there had been no Rule to give the Preference to the Senior ; it would be very surprizing to find, that in above Forty Years the Board of Aldermen should always (except four times) agree to chuse the Senior who had not Serv'd ; or that when the immediate Senior was put by, upon his own Request, or upon some other Reason assign'd, they should never go any farther than to the next

immediate Junior to him who was so put by.

The first Instance of any Interruption after the Year 1672, was in the Person of Alderman *Jones*; who, our Author says, was Senior to Sir *Joshua Allen*, and Sir *Francis Brewster*: And yet these Two were chosen Lord-Mayors, one in 1673, the other in 1674; and *Jones* was postpon'd, and rejected. Now these Two, however, were the Two immediate Juniors to *Jones*, and they succeeded the two following Years. As to *Jones*, it is true, he was Senior Alderman to the Two here mention'd; but it does not appear that he was ever in the City, nor in the Kingdom, after Sir *Joshua Allen* was chosen, nor at, or a little before the time of his Election; it is certain, he never Sign'd any of the City-Books, or Rolls, after the 21st of February, 1672. So that it is highly probable he dy'd, or remov'd from the City, and never after insist'd on the Rights or Privileges of an Alderman. And it does not appear, that he desir'd to be Chosen; much less, that he ever Petition'd, or made any Exception against the Election of Sir *Joshua Allen*, or Sir *Francis Brewster*.

The next Instance mention'd by this Gentleman, is Alderman *Bennet*; who, he says, was Senior to Alderman *Lovet*, and Alderman *John Smith*; and yet they were both prefer'd to him, and Serv'd as Lord-Mayors, one in 1676, the other in 1677.

I Answer; The Case was quite otherwise. The Turn of *Bennet* fell in the Year 1675; and Alderman *William Smith*, an ancient Alderman

derman, who had before been Lord-Mayor, serv'd for that Year. And so far was Alderman *Bennet* from opposing Alderman *William Smith*, that he sign'd his Election: Which is a plain Evidence of his assenting to it, and waiving his Right. And *volenti non fit injuria*.

The Candor and fair Dealing of our Author in managing this Instance, is very remarkable. He has plac'd the Elections of *Lovet*, and Alderman *John Smith*, before that of Alderman *William Smith*; and the Year 1676, before the Year 1675; as if they Two had leap'd over, and post-pon'd Alderman *Bennet*: And then he brings in the Election of Alderman *William Smith* the second time, and as another Instance of the Breach of the Succession. Whereas, the Truth is, in the Year 1675, when it was *Bennet's* Turn to serve, Alderman *William Smith*, by his Consent (and, it may be suppos'd, by his Desire) serv'd in his Room; which confirms, rather than interrupts the Succession. And *Bennet* having wav'd his Turn, and put another in his Place, *Lovet*, and *John Smith*, succeeded in their own Years, neither sooner, nor later, than by the Course of Succession they ought to have done. And yet our Author, to multiply Instances of Interruption in the Succession (for indeed he wants them) makes these to be Three Interruptions; which could, at most, be but One; and is really none at all.

The last Instance assign'd, is in Sir *John Rogerfon*, who as our Author says, serv'd before his immediate Senior, Alderman *Blackball*. And what if the Government did ap-

prove of Him? Did *Blackball* Petition? He did not. How then could the Government know, that *Blackball* was *Rogerson's* Senior? And yet this is insinuated as a Precedent against Alderman *Constantine*; who did Petition, and insisted on his Right, as Senior Alderman.

But Alderman *Rogerson* himself, as well as all his other Brethren, who serv'd in the Mayoralty since 1672. must be Witnesses for Alderman *Constantine* in this Cause.

For could our Author assign no other Instances since the Year 1672. in which the Office of Lord-Mayor has been executed by those who have not had the immediate Right of Succession? The Recorder himself cannot plead *Ignorance* here; however he may in other Cases: They were omitted therefore by our Author, because they make against him; and no other Reason can be given for that Omission.

He knew, and heard, no doubt, at the Council-Board, that in 1683. Alderman *Philip Castleton* Petition'd the Board of Aldermen, and set forth, that *He was next to succeed to the Office of Lord-Mayor, according to the usual Custom; and pray'd to be excus'd.* If he was not bound to bear the Mayoralty, as next in Succession, he would not surely have Petition'd to be excus'd, 'till he was actually elected. And if the next in Succession had not a Right to that Office, the Aldermen would not have suffer'd him to alledge such Right and Custom in his Petition.

The whole Board of Aldermen knew, and acknowledg'd the Right of Succession in the
Year

Year 1681. Alderman *Bradock* was then Senior Alderman, and should have serv'd as Lord-Mayor; but He made an Agreement with Alderman *Mitchell* to serve in his Room. And so sacred did the then Board of Aldermen hold the Right of Succession to be, that to make way for Alderman *Mitchell*, Alderman *Bradock* was first chosen, and Petition'd to be excus'd, and to be put above the Cushion. Then Alderman *Blackball*, the next Senior, was chosen; but, as it was agreed on, He was not presented to the Government to be approv'd. Then the next-Senior Alderman, *Rogerson*, was chosen; but He was in *England*, and could not serve. After Him, Alderman *Wats*, Alderman *Fletcher*, and Alderman *Billington*, the Three next Senior Aldermen, Petition'd to be excus'd; and so *Mitchell*, the next in Succession, was chosen, and serv'd as Lord Mayor. Certainly there was a Regard had to Succession; otherwise, why were there so many previous Elections made, on purpose to come at Alderman *Mitchell*?

The City, and Kingdom being wasted by the War; the Perquisites of the Mayoralty, in the Year 1691, were but very small, and fell far short of the Expences of the Office. For which Reason it was agreed by all who were then present at the Board, each consenting to wave his own Right, that Alderman *Mitchell* should serve for the Year 1692.

In the Year 1693, Alderman *Rogerson*, being return'd from *England*, insisted on his Right to serve; it being his Turn, in regard that Alderman *Bradock* had procur'd another

to supply his Place, in 1681; and that Alderman *Blackball* had, after he was chosen, voluntarily wav'd his Right, and suffered *Mitchell* to serve, in 1692. And he was, as of Right he ought to have been, elected for that Year, tho' Alderman *Blackball* was his *Senior*. This was the Year he had a Right to serve in, according to the Order of Succession; and he actually did serve by Vertue of that Right.

Nay, even Alderman *Lloyd*, whose Poverty was a just Objection against him, was not put by his Right of Seniority; but was persuaded to recede from it, upon a Composition.

And tho' it was thought expedient to deprive Alderman *Constantine* of his Right; yet, as to all that follow'd, the Order of Succession was observ'd. It was for that Reason that Alderman *Forrest* was chosen; tho' he was so indigent, that about the time of his Death, his Goods were taken in Execution, and his Wife and Family maintain'd by Charity; and Alderman *Eccles*, tho' a Dissenter, was the next Lord-Mayor. Poor Alderman *Constantine*, tho' a wealthy Citizen, and a zealous Church-man, must be excluded from the Mayoralty, when he was *Senior* to them both; and consequently had an undoubted Right to be prefer'd before them.

This *By-Law* then which we insist upon (tho' it was deny'd, that there was any such thing in being) was produc'd, and read at the Council Board, to the great Mortification of Alderman *Constantine's* Adversaries; and it did effectually serve the present Turn, as this Gentleman, with singular Modesty, is pleas'd to

to exprefs himself. It was indeed fo unlucky for him and his Friends, that one can fcarce blame 'em for being angry. *In turning over fome old Books*, fays he, *in the Tholfel-Office, they found an old Paper Book.* Is Age then an Objection againft a Law? I remember the Duke of *Buckingham*, in King *Charles* the Second's time, quoted an ancient Statute upon a Debate in the Houfe of Peers: *And, my Lords*, fays he, *let me tell you, Statutes are not like Women; they are never the worfe for being Old.* Or to be more ferious; There is a certain Book in the World of great Authority, and yet much more ancient than this *By-Law*. The Book, I mean, is the *Bible*; which, as I am inform'd, is the oldeft Book in being; and yet there are very good Laws in it; tho' if fome People had them in their Power, perhaps they'd *Repeal* 'em. But then this *By-Law* was writ upon *Paper*. — And it might be writ with *Ink*, for ought I know: But is it ever the worfe for that? *Parchment* may perhaps be neceffary to the making of an Act of Parliament: But a poor *By-Law* of a Corporation, may be forc'd to take up with *Paper*. Well; but *the City of Dublin*, he fays, *had not heard of it for an Age past.* Suppofing this were true; yet the conftant Praétife, as we have fhewn, was agreeable to it; the Citizens of *Dublin* therefore walk'd by this unknown Law, as the *Athenians* worship'd the unknown God. And can there be a better Argument of its Excellence, tho' it were *written upon Paper*, than to have it obey'd like the Law of Nature *written upon Mens Hearts*? But after all,
what

what he here asserts is a Negative, and Difficult to be prov'd: *He* perhaps had not heard of it; but how does he know *nobody* else had in an *Age* past? The Recorder likewise declar'd at the Tryal, that *he* never heard of it. Now I must own 'tis a Misfortune to any City to have its Recorder know nothing of its Laws; but we can no more help that, than we could help many other strange things which have lately happen'd. Were every Lawyer's Ignorance of a Law an Argument against it; the *Laws of the Land* might be in as much danger, as those of the *Corporation*.

Two of the Three *By-Laws* here recited, *viz.* That about *Trinity-Guild*, and that about *a Mayor's not holding the Office Two Years together*, do not affect this Point; and were not *insisted upon* by the Council, tho' *mention'd* by them. But these, being made in Popish Reigns, were brought in by our Author, only to scandalize a *Third* which alone affects the present Case. For the Recorder, at the Tryal, call'd them all promiscuously, *Popish Laws*. And what if they had all been so? I must beg leave to say (tho' I know he'll call me Papist for't) that we had many good Things done in the Times of Popery. What does he think of *Magna Charta*, and several useful Acts of Parliament made before the Reformation? But *Popery, Popery*, is an Argument upon all Occasions.—I wonder the same *By-Law* was not chang'd with a Design of bringing in the *Pretender*. For what if it was made 120 Years before he was born? The Name
of

of the *Pretender* join'd with *Popery* adds great Weight and Strength to the Argument. But besides; that *By-Law* which is the only One we are concern'd in, was made, as we have seen, in the 11th of *Elizabeth*. Now I always thought Queen *Elizabeth* had been a good *Protestant*: But since she was a *Papist*, there's no more to be said.

But why is Mr. *Butler* the only Person mention'd by Name among Alderman *Constantine's* Council? Who, by the way, were not Council *against* the City, but *for* it.—Are the other Gentlemen so inconsiderable? Their Adversaries have reason to know them; and I am sure they don't despise them. There was indeed no occasion of naming *any body*; but if *One* must be nam'd, why not the rest? Or, why must Mr. *Butler* be *that One*? Why, the Reason is plain: Mr. *Butler* (commonly call'd Sir *Toby Butler*) is, we all know, a *Roman Catholick*; but as he has a Liberty of practising the Law, and is esteem'd for his Sufficiency in it, 'twas never thought a Reflection upon any *Protestant* to employ him. And yet he alone is here mention'd for no reason but to throw some more *Popish* Dirt at Alderman *Constantine*, and his Friends. Whether the childish Folly, the senseless Malice, or the ungentlemanlike Baseness of this, be most considerable, I leave to others to determine.

What follows, in the Three next Paragraphs, is nothing but a Repetition of what he before said, and we have already disprov'd. So that he seems to bring it upon the Board again, only to have an Opportunity of throwing out some more hard Words
upon

upon that mischievous *By-Law*. To treat Laws with such *Contempt*, and call 'em so many Names; is a greater Indignity than *breaking* them. But thus I have known an ungracious Son behave himself to his Father; not only disobey his Commands, but abuse his Person: And that almost in the same Phrases and Epithets with those here made use of. The *By-Law* has been call'd an *Old By-Law*, an *Obsolete By-Law*, an *Antiquated By-Law*, a *Sleeping By-Law*, a *Popish By-Law*, and a *Paper By-Law*; And the Rogue of a Boy has been at it to his Father; *You Old Fool*; *You Old Doating Fool*; *You Old Sleepy Fool*; *You Old Paper-skull'd Fool*. But 'tis no wonder that a Law, and that too only of a Corporation, should be thus affronted; when those who in the Highest Posts make and execute the most important Laws of the Land are treated in the same manner by the same Persons. But I would here remind them, that there is another Thing, besides this *By-Law*, which may *seem to sleep*, when it really *does not*; and that's *Justice*.

But he proceeds: *Admitting those Entries of By-Laws were Evidence of such By-Laws; yet they neither did, nor could controul, &c.* Is it a Doubt then, whether those Entries were Evidence? No; But he is pleas'd to admit what cannot be question'd. The rest of this Paragraph is only a nauseous Repetition of what he had before repeated. His whole Paper, indeed, is full of such Elegancies; and one may plainly see by That, who was the Penner of it. Men commonly write

as they *speak* ; and we all know who that famous Pleader is, who has the *Natural Parts* of a *Dog in a Wheel* ; being so particularly distinguish'd by his Volubility in talking an *infinite deal of Nothing*, and by his endless Rotation of Tautology and Impertinence.

The *Repeal* of the *By-Law* comes next to be consider'd ; and this was a more extraordinary Proceeding than any yet mention'd. The Assembly in which it was transacted, was not a *Quarterly*, but only a *Post-Assembly* ; and consequently, had no Authority to make, or repeal a Law. Some of the Commons had not *timely Notice* ; others had *no Notice* at all : And a considerable Number of them *protested* against the whole Proceeding, in the following Words.

WHereas a *Post-Assembly* of this City was Summon'd to Meet the *Fifteenth* of this Instant May, 1711. at the *Tholsel* ;

And whereas that *Post-Assembly* made an *Act* to abrogate and make void sundry ancient *By-Laws*, although it has been the constant receiv'd Opinion, That no *Post-Assembly* could break or make void the *By-Law*, or *By-Laws* made by a *General Assembly* :

For which Reason, and other good Reasons us thereunto moving, as the Irregularity of Summoning that Assembly, and refusing to have the *By-Laws* read which were thereby pretended to be repeal'd, although several of the Commons mov'd to have them read ;

We the under-nam'd Commons do hereby Protest against the said Proceedings ; as being contrary to our Minds and Inclinations to have any
By-

By-Laws vacated, without reading, or considering the same, and at a Quarter-Assembly.

John Wimmin.
 Edw. Butler.
 Geo. Spike.
 Jo. Nicholson.
 Ja. Taylor.
 Jos. Crowther.
 Jos. Sheppy.
 John Allen.
 John Gibson.
 M. Reily.
 Jo. Webb.
 Jo. Price.
 Mich. Pookely.
 William Philpot.
 Henry Lee.
 Richard Skellern.
 William Philips.
 Tho. Wilson.
 Ja. French, *Senior*.
 Francis Quin.
 Isaac Wills.
 Peter Verdoen.
 Tho. Thorne.
 Alexander Johnston.
 Edw. West.
 Edw. Gayton.
 Crofnell Severne.
 George Faulkner.
 Richard Wilding.
 Francis Thompson.
 Jo. Crafts.
 Tho Taylor.

And

And were I to argue the Point, even with those Gentlemen who Sign'd the Petition for the Repeal ; I would ask a Majority of them, whether they knew what they were then doing ; Whether they were not Drawn in, without sufficient Consideration, to contribute, what in them lay, to the Ruin of their own Rights and Privileges ? And whether they are not now heartily glad that they had no Power to do what they thought they had done ? I am sure they have all the reason in the World to be so ; and to thank God, that the *By-Law* concerning Seniority, which is the best Security of every particular Persons Succession to the Mayoralty, is still in its full Force ; though they imagin'd they had repeal'd it. The Petition they were perswaded to Sign, begins with, *Whereas several By-Laws, made when Popish Aldermen and Freemen were admitted, &c.* Now would they have set their Hands to this, had they known that, by so doing, they reflected upon the Memory of the Glorious Queen *Elizabeth*, and charg'd Her with *admitting Popish Aldermen and Freemen into the Government of the City* ? Most certainly they would not : And therefore they have reason to resent such Usage from Him, or Them, who led them into such a Complication of Errors.

However, some particular Persons did what they could to repeal the *By-Law* ; and indeed, after it had been so abus'd with opprobrious Language, 'twas natural to think some further Mischief was at hand. Thus a Man is
first

first call'd *Rogue and Rascal* ; and then he's knock'd down. Or, (to come closer to the Case) Thus the *Persons* of Princes and Governors are first treated with Disrespect ; and then their *Authority* is cancell'd and abolish'd. But what *Occasion* was there for Repealing it *Now* ? I thought they had insisted, That it was *Before* Repeal'd by the *New Rules*. But sure *Work*, they will say, is best ; and sometimes a Man who has had his Throat cut, has afterwards had his Brains beaten out, for fear he should recover. After all, 'twas at best but a sneaking Cowardly Trick, to steal upon the poor *old By-Law*, and repeal it while it was *asleep*. But be that as it will ; had the *Authority* of the *Assembly* been never so unquestionable, (as it was really *None* at all) the *Repeal* of this *Law* upon this *particular Occasion*, and while *this Cause* was actually *depending*, was, with respect to this *Cause*, illegal and invalid, without all *Precedent*, and contrary to all *Justice* and *Equity*. For I would fain know how they will get over this *Inconvenience*. Either the *By-Law* was in *Force* before this pretended *Repeal*, or it was not. If it was not ; what *Occasion* was there of *Repealing* it ? If it was, (as indeed we have undeniably prov'd it was) then *Alderman Constantine's* *Right* was well supported, when he claim'd under it ; and *Justice* was, consequently, deny'd him. Nor could any *After-Repeal* lessen that *Injustice* ; but rather aggravate the *Grievance*, and render it more intolerable.

After

After this, he tells us, *To leave Alderman Constantine without any ground of Complaint, the Order which put him above the Cushion was vacated.* The Folly of this Cushion-Doctrine has already been sufficiently consider'd; and therefore I shall add no more upon that Subject. But to say, that Alderman Constantine was left without any Ground of Complaint, after the Usage he has all along met with; is such an insolent piece of Mockery upon him, and such an audacious Defiance to the Common Reason of Mankind, that it it ought to be resented by all who have any Regard to Common Truth and Justice, or to the Common Rights and Interests of Themselves, and their Fellow-Subjects.

Some Persons, says he, were pleas'd to insinuate, That the Electing Alderman Barlow a Second time, was offering an Indignity to the Government and Council. Pleas'd to insinuate? 'Twas more than insinuated; 'Twas openly declar'd to be, as it certainly was, a most scandalous Indignity, and a manifest Breach of the New Rules; as we have before demonstrated. But here is an Argument and a Distinction brought to prove the contrary; and to shew that this Proceeding could not be construed a Disrespect to the Council-Board: Alderman Barlow's first Disapprobation not being grounded on any Dislike they had to the Person elected, but on a Right or pretended Right set up in Alderman Constantine, under colour of the Old By-Laws; which, as was apprehended, ceas'd, if any such Right he had, by the Repeal of those By-Laws, previous to the Second Election.

D

Now

Now I grant indeed, it could not be construed a *Disrespect*, properly so call'd; because 'twas something more: 'twas *Disobediene*, which is worse than *Disrespect*. But how did They know what Reasons the Government and Privy-Council had for Disapproving Alderman *Barlow*? They assign'd no Reason; and what the *Lawyers* argued, was not Authoritative; tho' it might be perswasive, and convincing. And in this I don't cavil. I agree, that what is here mention'd concerning Alderman *Constantine's* Claim, was undoubtedly *One* Reason of that Disapprobation: Nay, every Body believes 'twas the *only* one. But still who knows That? Who is sure of it? Nay, farther, were it certain that the *only* Reason of a Disapprobation were seas'd; yet the same Person ought not to be Re-elected. As it has been adjudg'd in the Case of *Hollington*, who, within these few Years, was chosen Mayor of *Cashel*; and for Reasons alledg'd against him, was disapprov'd. And tho' it afterwards appear'd that those Reasons were ill-grounded; yet he being chosen again, was again disapprov'd; because his Re-Election was judg'd and determin'd to be a Breach of the New Rules, and an Indignity to the Government and Council.

Or supposing, which they themselves desire, that *Constantine's* Claim was the *only* Reason of the Disapprobation of *Barlow*: the Indignity is, by that, rather improv'd than diminish'd; the Person rejected being again chosen, and *Constantine* being still injur'd. For

as to the pretended *Repeal* of the *By-Law*, it was (as I have fully shewn) every way illegal and invalid; and I appeal to the Consciences even of those that did it, whether they themselves are not Now convinc'd that it was so?

But this Writer confidently asserts, That *several Instances can be given, since the Revolution, where Persons elected into the Magistracy of other Corporations, have been disapprov'd by the Government, and afterwards re-elected; and in some Cases, that they have been, upon their Second Election, approv'd.* If instead of saying several Instances can be given, he had actually given *one*; the Argument would have been much better and stronger. From what has been already prov'd, I think it pretty plain, that we are not bound to believe it *barely upon his Word*. I am sure, we have plainly produc'd a very pregnant Instance to the contrary; which is more than we were oblig'd to do, the *Reason and Nature* of the Thing being clearly on our Side.

Alderman Barlow, he says, being a Second time disapprov'd, they deferr'd proceeding to a Third Election, till His Grace the Lord Lieutenant Landed. They did so; but for what Reason, I know not; unless it were to have an Opportunity of shewing, that 'tis equal and indifferent to them, whether they affront Two Lords Justices, or One Lord Lieutenant.

It seems to be made an Objection in this Paper, (tho' mention'd only in a Parenthesis)

that this Cause was not heard before his Grace; not without a broad *Innuendo*, that it was unfairly represented to him by the late Lords Justices, and the Privy Council. *The Misfortune of the City was such, that their Proceedings were so represented to his Grace, &c.* And upon whom did it lie to represent it, but upon the late Lords Justices, and the Council Board? This Reflection, both for the Falshood, Malice, and Impudence of it, is so scandalous, that it answers it self; and to mention it, is to expose it.

But what occasion was there of a Re-hearing before his Grace? It had already been heard by the Government and Council just before his Grace's Arrival: And who could be more proper than they, to give him a true State of it? However, if Alderman *Constantine's* Adversaries were not satisfy'd, why did they not desire another Hearing? Or did they expect his Grace should send a Message, and desire them to desire it? Have they so much as pretended that any Wrong has been done them in this Particular? Or that they had any thing else to offer? Nothing like it; but this fly Stroke of Scandal, they thought, might create a Jealousie, and do some sort of Mischief among the People; by arraigning the Justice of the Government and Council.

By *chusing a Third Person*, it seems, they were in hopes that an End might be put to all future *Elections*. But how was it possible they could have such Hopes, when they knew that the Third Person was exceptionable for the very same Reason, for which the Two former had

had been disapprov'd? But, in short, they were resolv'd to chuse any Person, but him whom they ought to have chosen. So that, what is said about the *Misfortune of the City*, in having so many rejected, is all *Cant*; to say no worse of it. — They were so *unfortunate* as to be resolv'd not to do their Duty: They were so *unfortunate* as to be very Unjust, and very obstinately Disobedient. It is indeed a *Misfortune* to the City, to have such Members; that's the real, and the only Truth of the Matter. 'Twas therefore to no purpose for our Author to give us a particular Detail of the several Persons lately elected and disapprov'd. As many Elections as were made in that manner, just so many times the Government was affronted.

One of the greatest Objections made by them, is the Disapprobation of *Eight several Sheriffs*; against whom there was no Petition, and who were not so much as Summon'd or Heard. To which it is answer'd, 1. That the Government and Council have a Right and Authority to approve, or disapprove, without Giving any Cause, or Hearing any. 2. Tho' they have that Power, yet they have never disapprov'd, but upon very good Reasons, and due Consideration. They have always taken care to keep Corporations to the Observance of their ancient By-Laws, Customs, and Usages. And as to the present Case; The New Lord-Mayor, by the Custom of the City, has the Nomination of a Sheriff. And, in the several Elections thus unduly made, the Lord-Mayor being rejected, both Sheriffs could

not be approv'd without a Prejudice to the Lord-Mayor, who should be duly elected and approv'd. And it not being distinguish'd in the Return; which of the Sheriffs was nominated by the Lord-Mayor, the Government and Council were under a Necessity to disapprove of both.

The City, we are assur'd, are desirous to make any Compliances consistent with their Right and Freedom of Elections, and with the Oaths they have taken to maintain the Rights of the City. Do the Rights of the City then consist in breaking its Laws? And have these Gentlemen taken an Oath to do that? As to the Freedom of their Elections, no body denies them so much Freedom, as the Law allows them: And would they have more? Yes, that they would; and will be satisfy'd with no Freedom, but the Freedom of doing what they think fit. All the Restraint they have, is laid upon them by Laws; and one of those Laws was made by their own Body. But here is the Noise of Freedom, Rights, the Freedom of Elections, the Rights of the City: only to amuse and delude the People; while at the same time these worthy Defenders of theirs are breaking those Rights, and destroying that Freedom.

What is here fallly and maliciously insinuated concerning the Danger of *their Elections being turn'd into a Nomination of another Board*, cannot have the least Appearance of any Foundation; no other Board having ever pretended to nominate any Magistrate of the City, but only to oblige them to the Observation of their Laws and Customs. This therefore is
another

another Reflection upon the Government and Privy Council: than which nothing could be at once more *insolent* and *base*, except *This* which immediately follows it.

Since the making of the New Rules, no Lord-Mayor was ever disapprov'd; except One, who, in 1688, was rejected by the Lord Tyrconnel, to make room for Sir Thomas Hacket, a Papist. Alderman Constantine, being a private Person, it is not strange to have him coupled with Hacket the Papist. But must the Duke of Ormond be compar'd w.th Tyrconnel? Must a Parallel be made between the best of Governours and the worst? Since the Days of 41, no Government was ever thus insulted.

But this is the true Spirit of a Faction among us. Every Man (whether great or small) who heartily loves the Queen, the Church, and the Constitution, who religiously adheres to the Observance of Laws, and is for hindring that Faction from doing all the Mischief it intends; is presently a *Papist*, a *Jacobite*, an Enemy to the Revolution, an Enemy to the *Glorious Memory of King William*, an Enemy to the *Protestant Succession*, and a Friend to the *Pretender*: And must be *bawl'd*, and *clamour'd*, and *presented*, and *petition'd* out of the Post in which Her Majesty, or Her Ministers have plac'd him. Things cannot continue at this Crisis much longer; either this *Insolence* must be suppress'd, or the Government must be dissolv'd.

Besides; if I am rightly inform'd, this Instance of *Tyrconnel* and *Hacket*, is not only *false* in its Application, but in Fact. No

Lord-Mayor was then presented to *Tyrconnel* for his Approbation: *Hacket* was put in directly by King *James* himself; as, I think, it appears from the New Charter granted by that Prince to the City of *Dublin*. So that this Story was made on purpose to be apply'd to the Duke of *Ormond*: For fear his Grace should not be compar'd to *Tyrconnel*, even *Tyrconnel* himself must be charg'd with Crimes which he never committed.

In the midst of this Behaviour, they are making Professions of *the utmost Deference to his Grace, and the Privy Council*. This is *strange*; yet not wholly *new*. In the Reign of a certain King, his Subjects protested they were most Faithful and Loyal, and intended nothing but to make him Glorious; when at the same time they were stripping him of his Prerogative; nay, when they were actually in Arms, and had fought several Battles against him. If any thing can possibly be more *disrespectful* than the late Treatment of the Duke of *Ormond*, 'tis this Profession of *Respect* to him. Have they such a Contempt for his Grace, as to suppose he has lost his Understanding, and his Senses? If a Man should spit in my Face, and say, *Sir, I Honour you*; Would not that heighten the Affront, rather than lessen it? Would not the *Words* be more insolent and provoking than the *Action*? These very same Persons have made the same Declarations of their Duty to the *Queen*, and their Concern for the Rights of their *Fellow-Subjects*. Let us see how their Sense, upon the Whole, would look; if they had

had spoken it fairly and honestly in their late Petition to Her Majesty. It would run thus :

We Your Majesty's most Dutiful and Loyal Subjects, humbly beg Leave to complain, That the Government and Council here have oppos'd our Proceedings; when we were only flying in the Face of their Authority, infringing Your Royal Prerogative, and trampling upon the Rights of our Fellow-Subjects. For what if we were doing all this? We said, and declar'd, and profess'd, and protested the quite contrary; and that surely ought to give full Satisfaction to Your Majesty, and all Mankind. The Government and Council thought fit to reject a Lord-Mayor we had chosen; so, to shew our Deference to them, and prevent any Possibility of Exception the next time, we chose the same Person again. We had indeed a wicked By-Law which pretended to controul us; but it was made in the Popish Reign of Queen Elizabeth, and consequently can be of no Force under Your Majesty's Protestant Administration. Some People have been pleas'd to insinuate that we have offer'd an Indignity to the Government. But we humbly hope our Behaviour will not be construed to proceed (as in Truth it doth not) from the least Disrespect to his Grace, the Lord Lieutenant. For tho' we have compar'd him to Tyrconnel, and offer'd him all the Affronts we could study or devise, yet we have profess'd the utmost Deference to him; and besides, our Recorder made a Speech to him, in which he said, His Grandfather was a very good

good Man. We therefore humbly Implore Your Majesty to consider the Premises, and to interpose in our Behalf; that we may have the unlimited Freedom of doing what we please, and of acting contrary to all Law and Justice. For we will be very good Citizens, if we may be permitted to oppress our Brethren; and exceeding good Subjects to Your Majesty, if You will be graciously pleas'd to divest Your self of all Your Power and Authority.

This, I am sensible, looks like a Jest; and 'tis one. But for all that, 'tis no other than the plain *English* of their Professions compar'd with their Proceedings.

Our Author concludes with assigning the Cause of not electing Alderman Constantine. And never certainly was so silly a One introduc'd with so solemn a Preface. *Altho' it cannot be reasonable to require from those who have a Right to Elect, to give all their Reasons in Print, &c.* Who desir'd them to Print at all? 'Twas their own voluntary Motion, was it not? But since they have appeal'd to the People, I think, under favour, that it is reasonable they should give all their Reasons; and since they talk so much of their Right to Elect, we, the People, have a Right to demand those Reasons; all those Reasons; and that too upon * *Compulsion*; tho' Reasons, I must confess, are not so plenty with them as Blackberries. He goes on: *Yet to convince such,*

* Vide Sir John Falstaff.

who without Prejudice shall read this Case, it may not be amiss among others to mention One, i. e. They will mention One, among others which are not mention'd. This, I doubt, is scarce Sense; but let that pass.

However, by giving One Reason, they have shewn more Deference to us Readers, than they did to the Government and Council. The Recorder indeed made a strange shuffling Story about Alderman *Constantine's* Wife, and his own Respect for the Fair Sex (by the way, he has good Luck, if the Fair Sex have any Respect for *Him*) insinuating, however, that because the Women, as he was pleas'd to intimate, did not like the Wife, therefore the Aldermen ought not to Elect the Husband. But he positively refus'd to assign a Cause directly, tho' it was directly demanded; and insisted upon it that they were not oblig'd to produce any.

But so much for Preparation; What is this all-confounding One Reason? It is this: There is a Suspicion (nay, *the City are assur'd* of it) that if Alderman *Constantine* were Lord-Mayor, he would endeavour to make Mr. *Mercer* One of the Sheriffs; and tho' he should fail in that Attempt, he would still be under the Influence and Direction of that Gentleman. Now 'tis all out; And is not this convincing? He must be excluded from his Right, because he has a Friend whom the Aldermen don't love. What Monster of a Man is this *Mercer*? Is he perjurd upon Record? Has he lost one, or both of his Ears? What Churches has he rob'd? What Rapes, or Murders has he committed?

mitted? Nothing of all this; but he deals in Coals: and the City have Two or Three (they can't tell which) *Law Suits, or Prosecutions*, in order to restrain him from erecting a dangerous Monopoly of 'em. The Argument then stands thus. There is a Danger of Mr. Mercer's erecting a Monopoly of Coals; Mr. Mercer is Alderman *Constantine's* Friend; therefore, Alderman *Constantine*, ought not to be Lord-Mayor. Besides; this Fright about Coals, did not happen till a considerable time after the Rejection of Alderman *Constantine*; Mr. Mercer not dealing in that Commodity, when his Friend was first excluded from the Mayoralty. But I'll tell you what he had done, which was the great Crime of all: He had drunk my Lord *Rocheſter's* Health; as ſure as you are alive he had: He did it at *Cork*; There are ſeveral Witneſſes of it; Nay, he himſelf, has the Impudence to own it, without any the leaſt Sign of Repentance. Now is it fitting that a Man ſhould be Lord-Mayor, who had a Friend, who had drunk a Health to my Lord *Rocheſter*, who was Unkle to the Queen, who is the beſt Queen that ever reign'd? A Health to my Lord *Rocheſter*! A Man of that conſummate Wiſdom, and untainted Integrity! A Man, whom all the Enemies of our Conſtitution (and they only) hated while he was living, and curſe now he is dead! Was it pardonable to drink a Health to ſuch a Man as this? Or rather, was it not intolerable that Faction ſhould be ſuffer'd to triumph over Loyalty, Truth, Juſtice, and Reaſon?

Had

Had Mr. Mercer drunk to the *pious Memory* of *Oliver Cromwell* above-mention'd ; Had he drunk *Health to the Late Ministry*, or *Confusion to the Present* ; Had he drunk *Greg's Fate to all Sacheverell's Friends* ; or, *Plague, Pestilence, and Famine, Battle, and Murder, and Sudden Death to all Archbishops, Bishops, Priests, and Deacons, &c.* or any other of those *Healths*, or any other of those *Curses*, which are play'd off at *Glorious Memory-Fests*, at *Sessions, Assizes, Tholsel*, or any other *Solemn Assemblies*, to *Regale Republicans and Atheists*, or to *Choak Honest Men* ; Had he done any thing of this, perhaps he might not have been the *Reprobate* he is now ; and he would have been altogether as fit for a *Sheriff*, as a *Hot-headed Ignoramus* for an *Attorney-General*.

The Truth of the Matter therefore is this, Both *Mr. Constantine*, and *Mr. Mercer* are *Worthy, Honest Citizens* ; *Men of Fortune, Figure, and Credit* ; heartily *Loyal to Her Majesty*, truly *Lovers of Monarchy and Episcopacy*, zealous for the *Constitution* both in *Church and State*, and for the *Protestant Succession* in the *Most Illustrious House of Hannover* ; sincerely *Well-wishers to the Present Ministry* ; thankful to *God*, and them, for the *signal Services* they have done their *Country* : And for all these *Reasons*, defam'd and traduc'd as *Papists and Jacobites*. On the other hand, all the *Kingdom* knows who is the *Ring-Leader* of the *opposite Party*, and that their *Penman* is undoubtedly the same as their *Spokesman*. It is likewise notoriously known,

known, that not very long since, when an *Address* was to be Presented to Her Majesty from the City, the following Clause was offer'd to be inserted by certain of the Commons : *We look upon it as one of the great Blessings we enjoy under Your Majesty's Government, that the Succession in the Protestant Line, and the Establish'd Religion, are happily secur'd to us by many Good and Wholsom Laws.* And that the said Clause was, by the Recorder, in an angry and contemptuous manner, after he had read it, rump'd up, and thrown away ; and that the *Address* was sent, without that Clause, as the *Address* of the City.

Here, not to insist upon this manifest and most insolent Breach of the Rights of the Commons ; it is plain from hence, how the Wishes and Opinions of these Men differ from those of Mr. *Constantine* and Mr. *Mercer* ; that Partiality to a Faction, is the only Ground of all this unjust Proceeding ; and that the *Clause* was excluded from the *Address*, and the *Alderman* from the *Mayoralty*, for the same Reason, and upon the same Principles.

And what a Faction that is, and what it aims at, is at the same time pretty evident. The rejected Clause contains but Two Things ; the *Church*, and the *Protestant Succession*. And I did not think the Recorder and his Friends would have so openly DECLAR'D against either, especially the latter, how sincere soever they may be in their Aversion for Both.

But

But we need not wonder at this; since we have a *later* and fuller Discovery of these Matters. No longer ago than at last *Christmas* Quarter-Assembly, the following *Petition* was carry'd by the Commons to the Board of Aldermen, in the usual manner.

To the Right Honourable the Lord Mayor, Sheriffs, Commons, and Citizens of the City of Dublin.

The PETITION of certain of
the COMMONS;

Sheweth,

THAT it has been the *Practice* of this Honourable City to pay their Duty to Her Majesty, by Addressing Her upon all Occasions, to express their Duty and Loyalty to Her Person and Government.

May it therefore please Your Honours, that Mr. Recorder be Order'd to Draw up an ADDRESS upon the following Heads, viz.

To Congratulate Her Majesty, upon the Success of the Arms of Her Majesty, and Her Allies, in Flanders.

To Thank Her Majesty, for Appointing His Grace the Duke of Ormond to be Lord Lieutenant of this Kingdom, which has always flourish'd under Him, and His Noble Ancestors.

To

To Thank Her Majesty, for the late Measures She has taken, for the Safety and Welfare of Her People, and for the Choice of Ministers of such undoubted Loyalty and Ability.

To Assure Her Majesty, That we will Stand by Her Just Prerogative, against all who shall endeavour to Lessen or Invade it.

That we will, to the utmost of our Power, maintain the Present Constitution in Church and State, and the Protestant Succession as by Law Establish'd ; not only against the Pretender, but all other Her Majesty's Enemies.

This Petition was not receiv'd ; nor was any Address ever made since. It is not strange indeed, that Those to whom it was offer'd, should not be very zealous for His Grace the Duke of Ormond, the Present Ministry, Her Majesty's Prerogative, and the Establish'd Church. But that they should refuse to Congratulate Her Majesty, upon the Success of Her Arms ; and to Assure Her, that They were for the Protestant Succession, and against the Pretender ; was, I must needs say, extremely open and barefac'd : Especially, since by that Refusal, they at the same time infring'd the Rights and Privileges of their Fellow-Citizens ; for so I take the Commons to be, tho' perhaps they will not be own'd as such. This is the Party, who are always talking about Rights, Liberties, and Privileges ; who make such a Noise about the Revolution, the Glorious Memory of King William, and the Protestant Succession, on the one hand ; and against Popery, Jacobitism, and the

the *Pretender*, on the other. How can those Men have the Confidence to *Exclaim* against the *Pretender*, when they would not *Address* against him; or to talk about *Liberty*, and the Memory of King *William*; when they are *Overturning* those *Liberties* which that *Ever-glorious Prince* came to rescue and preserve? I am sensible, that I have taken notice of this more than once before; yet I do not imitate the *Tautology* of the *Case-Writer*; For tho' I have mention'd it *several times*, I have had so many *several Occasions* to mention it.

I have now gone through the *Dissection* of this *Libel*; (for so, I think, after what I have prov'd, I may take the *Liberty* to call it;) I have not left one *Tittle* of it unexamined: And I appeal to all Mankind, except those who are resolv'd not to be convinc'd, whether I have not fully made out what I undertook in the *Beginning*; and shewn it to be nothing else, but a *Heap of Falshoods* and *Misrepresentations*.

From the *Merits* of a *Cause*, 'tis a natural *Transition* to the *Success* of it. And in the present *Case*, those who have given so wrong a *Turn* to the *former*, have (I am told) as falsely represented the *latter*. They boast, it seems, that they have *Carry'd* their *Point*. And how have they *Carry'd* it? They *Appeal'd* to the *Queen*, against the *Proceedings* of the *Government* and *Council*; and the *Consequence* of it was, the following *Letter*, written by Her Majesty's *Command*.

E

To

To His Grace JAMES Duke of Ormond,
Lord Lieutenant General, and General-
Governor of Ireland.

Whitehall, 27 Sept. 1711.

My LORD,

THE Case of the late Elections of a Lord-
Mayor in the City of Dublin, as stated by
Mr. Attorney, and Mr. Solicitor-General of
Ireland, and transmitted hither by Your Grace,
as likewise the Petition of the City, have
been laid before the QUEEN. And Her
Majesty having taken the same into Her Con-
sideration, Commands me to acquaint You, That
She Approves of Your Grace, and Her Privy-
Council, Asserting the Rights of the Crown to
Disapprove of Persons Elected Mayors by the
Court of Aldermen, when You judge it proper
so to do. I am,

My LORD,

Your Grace's most Obedient,

Humble Servant,

DARTMOUTH.

The Petition therefore was Rejected; and
produc'd no other Effect, than to have the
Proceedings of the Government Confirm'd by
Her Majesty's Royal Approbation. What
then

then should hinder them from going on, to the utmost Exercise of their Power? They were bound in Honour and Conscience to persist in doing Right to Alderman *Constantine*; nor could they refuse it, without a manifest Contradiction to Themselves: And Her Majesty had the same Obligation to Justifie them in those Proceedings which She had already Approv'd. But the Time of a New Lord-Mayor's entring upon his Office being actually come, Alderman *Constantine*, like a Worthy Citizen, was for preventing any farther Dispute, at so unseasonable a Time, and therefore Presented the following *Petition* to the Government and Council.

To His Grace JAMES Duke of Ormond,
Lord Lieutenant-General, and General-
Governor of Ireland; and the Lords of
Her Majesty's most Honourable Privy-
Council.

The Humble PETITION of Alderman
Robert *Constantine* of the City of
Dublin;

Sheweth,

THAT Your Petitioner was, by the Laws and Customs of the said City, Entitled to be Elected Lord-Mayor thereof, as Senior Alderman below the Cushion.

That notwithstanding Your Petitioner's said Right, several Aldermen of this City have been elected and return'd, for the Approbation of this

Honourable Board, who were Juniors to Your Petitioner, or had serv'd the said Office before; who have not been approv'd of by Your Grace and Lordships; such a tender Regard has this Honourable Board had to Your Petitioner's Rights.

That on Saturday last, Alderman Ralph Gore, a Junior Alderman to Your Petitioner, was elected to serve as Lord-Mayor for the Year ensuing. That Your Petitioner is highly sensible of the repeated Acts of Justice this Honourable Board hath done him: But the Affairs of the City requiring that a New Lord-Mayor should be admitted, and Your Petitioner, having a greater Regard to the Repose and Quiet of the City, than to his own private Satisfaction, he is not willing to give Your Grace and Lordships any further trouble at present in this matter. But if Your Grace and Lordships shall think fit to approve of the Election of Alderman Gore, Your Petitioner doth humbly Acquiesce therein; Saving unto himself his Right of Seniority for the future.

ROBERT CONSTANTINE,

He therefore generously waving his Right, *pro hac vice*; tho' with a *Salvo* to it for the future; his Grace, and the Privy Council were pleas'd to approve of Alderman Gore, a Person unexceptionable, since all his Seniors acquiesc'd in his Election. What use then ought to be made of so much Goodness and Condescension? Indeed, strange Stories are told upon this Occasion: And since we have been

been canvassing a Law Subject, I will only desire to put a Case. I am engaged, suppose, in a Suit with another Person about a considerable Sum of Money; and have a Verdict and Judgment given for me; upon which I have a Right *immediately* to exact the Payment. But, being good-natur'd, I kindly forbear him; and, by a Promise under my Hand, give him *a longer time*. If, upon this, he should go and *brag*, that he had *gain'd his Point*; that he had *conquer'd me*; that the *Verdict* given for me was not *genuine*, but a *forg'd*, and *spurious Verdict*; or that if it were real, and publickly given in Court, yet I had *secret Intimation* from the *Judges and Jury* to *make up the Business*, and not presume to *demand the Money*; or that I really *never gave him any such Note of Forbearance* but only *pretended it*, to *cover my own Disgrace*: I say, should he act in this manner; would it not be a proper Question, Whether the Ingratitude, or the Folly of the Man were the greater? Most certainly *upon the Expiration of the Time* I had *allow'd him*, I should be oblig'd in Honour, and for my own Vindication, to allow him nothing but the *severest Rigor of the Law*: and should be justify'd before God and Man, should I deny him any more Indulgence; and abandon him to lie in Prison, *till he had paid the uttermost Farthing*.

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T H E E N D.

